



6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent to Revise Collection Numbers 3038-0052 and 3038-0074, Core Principles and Other Requirements for Designated Contract Markets, and Core Principles and Other Requirements for Swap Execution Facilities

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (“CFTC” or “Commission”) is announcing an opportunity for public comment on the proposed revision of two collections of certain information by the agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments, as described below, on the proposed Information Collection Requests (“ICR”) titled: OMB Control Number 3038-0074 and Part 38, Relating to Core Principles and Other Requirements for Designated Contract Markets; and OMB Control Number 3038–0052 and Part 37, Relating to Core Principles and Other Requirements for Swap Execution Facilities. This notice also solicits comments on the collection of information mandated by the Commission regulation on Contents of Notice of Disciplinary or Access Denial Action. The collection of information burden associated with that regulation belongs to OMB Control Nos. 3038-0052 and 3038-0074.

DATES: Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by OMB Control Nos. 3038-0052 and 3038-0074 by any of the following methods:

- CFTC website: <https://comments.cftc.gov>. Follow the instructions for submitting comments through the Comments Online process on the website.
- Mail: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.
- Hand Delivery/Courier: Same as Mail, above.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: David Steinberg, Associate Director, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418-5102; email: dsteinberg@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the *Federal Register* concerning each proposed collection of

information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed amendments to the collections of information listed below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Title: Core Principles and Other Requirements for Designated Contract Markets (OMB Control No. 3038-0052), and Core Principles and Other Requirements for Swap Execution Facilities (OMB Control No. 3038-0074). This is a request for an extension of currently approved information collections.

Abstract: The regulations governing designated contract markets (“DCMs”) were adopted pursuant to the requirements of the Commodity Futures Modernization Act of 2000 (“CFMA”).¹ Part 38 of the Commission’s regulations governs the activities of DCMs. The information collected pursuant to part 38 is necessary for the Commission to evaluate whether entities operating as, or applying to become DCMs, comply with the part 38 requirements including 23 core principles.

In June 2012, the Commission implemented core principles and other requirements for DCMs (“DCM Final Rules”).² The Commission stated in the DCM Final Rules that 18 DCMs were registered with the Commission.³ However, since publication of the DCM Final Rules, the number of DCMs registered with the Commission has decreased from 18 to 15. Accordingly, the Commission is revising the

¹ 7 U.S.C. 1 *et seq.*

² 77 FR 36612 (June 19, 2012).

³ *Id.* at 36663.

below burden statement from the DCM Final Rules to account for the decrease in the number of registered DCMs.

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) added new section 5h to the Commodity Exchange Act (“CEA”) to impose requirements concerning the registration and operation of swap execution facilities (“SEFs”), which the Commission has incorporated in part 37 of its regulations. These information collections are needed for the Commission to ensure that SEFs comply with these requirements. Among other requirements, part 37 of the Commission’s regulations imposes SEF registration requirements for a trading platform or system, obligates SEFs to provide transaction confirmations to swap counterparties, and requires SEFs to comply with 15 core principles.

In September 2016, the Commission published a 30-Day Notice of Intent to Renew Collection 3038-0074 (30-Day Renewal Notice) and stated that 23 SEFs were registered with the Commission.⁴ However, since publication of the 30-Day Renewal Notice, the Commission has granted permanent registration to two additional SEFs, for a total of 25 registered SEFs. Therefore, the Commission is revising the below burden statement from the 30-Day Renewal Notice to account for the increase in the number of registered SEFs.

In a separate document published elsewhere in this issue of the *Federal Register*, the Commission adopted regulation 9.11(b)(3)(ii) requiring a DCM or SEF (collectively, “exchange”) to include two additional elements in the disciplinary or access denial notice action provided to the National Futures Association. First, an exchange must include the

⁴ 81 FR 65630 (Sept. 23, 2016).

type of product (as applicable) involved in the adverse action.⁵ Requiring an exchange to provide this information in the disciplinary or access denial notice will provide the Commission, market participants, the public, and other exchanges with greater transparency concerning where market abuses originate and whether the abuses are concentrated among certain product types. Second, an exchange must indicate in its notice of disciplinary or access denial actions whether the violation underlying the notice resulted in financial harm to any customers. This requirement codifies the clarification contained in an advisory previously issued by the Commission (“Part 9 Advisory”).⁶ The Commission believes that the inclusion of customer harm is essential because it cannot effectively perform its regulatory and oversight functions without knowledge of those instances in which brokers violate their fiduciary duty to customers by taking advantage of customer orders and engaging in fraudulent activity. The collections of information are mandatory.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

⁵ For example, a product trading on a designated contract market might be specified as a July 2016 Eurodollar future; while a product trading on a swap execution facility may be a CDX North American High Yield Series 26 5 year.

⁶ The Part 9 Advisory permitted an exchange to file disciplinary or access denial notices with the Commission or the National Futures Association. 64 FR 39915 (July 23, 1999).

- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.⁷

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission believes that the additional burden for an exchange to add the two additional elements in the contents of the disciplinary or access

⁷ 17 CFR 145.9.

denial notice is de minimis.⁸ Accordingly, the Commission is maintaining its current estimate of the burden for both collections as result of these reporting requirements. However, the Commission is amending its estimates for the collections to account for the change in the number of DCMs and SEFs currently registered with the Commission. The current respondent burden for these collections are estimated to be as follows:

- OMB Control No. 3038-0052 (Core Principles and Other Requirements for Designated Contract Markets)

Number of Respondents: 15.

Estimated Annual Burden Hours Per Respondent: 490.5.

Estimated Total Burden Hours on Respondents: 7,357.5.

Frequency of Collection: As applicable.

- OMB Control No. 3038-0074 (Core Principles and Other Requirements for Swap Execution Facilities)

Number of Respondents: 25.

Estimated Annual Burden Hours Per Respondent: 1,000.

Estimated Total Burden Hours on Respondents: 25,000.

Frequency of Collection: As applicable.

⁸ The Commission stated in the Notice of Proposed Rulemaking that the burden associated with Commission regulation 9.11(b)(3)(ii) requiring an exchange to specify the product involved in the disciplinary or access denial action would be de minimis. 82 FR 7745 (Jan. 23, 2017). The Commission did not receive any comments regarding this determination. The Commission estimates that it will take an exchange just a few seconds to add the product involved in the adverse action and whether the violation underlying the notice resulted in financial harm to any customers.

The regulations require no new startup or operations and maintenance costs.

(Authority 44 U.S.C. 3501 *et seq.*)

Dated: January 9, 2018.

Christopher Kirkpatrick,

Secretary of the Commission.

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